

1 RUSSELL S. HUMPHREY, SBN 208744
2 HUMPHREY LAW GROUP
3 1420 S. Mills Ave., Ste. H
4 Lodi, CA 95242
5 Telephone: (209) 625-8976
6 Facsimile: (209) 625-8673
7 Email: russell@humphreylawgroup.net

8 Attorney for PLAINTIFF
9 FRANCISCA MORALEZ

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 FRANCISCA MORALEZ,
13
14 PLAINTIFF,
15 v.
16
17 LOS MOLCAJETES, CRESPIN
18 LIESELOTTE,
19
20 DEFENDANTS.

Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF: DENIAL OF
DISABLED ACCESS TO PUBLIC
FACILITIES; TITLE III OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990; VIOLATIONS OF
THE UNRUH CIVIL RIGHTS ACT
CAL CIV. CODE § 51, et seq.,
THE CALIFORNIA DISABLED
PERSONS ACT CAL CIV. CODE §
54, et seq.**

DEMAND FOR JURY TRIAL

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25 **I. SUMMARY**

26 1. This is a civil rights action by PLAINTIFF FRANCISCA MORALEZ
27 (hereinafter "PLAINTIFF"), for discrimination at the building,
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1 structure, property and land known as: LOS MOLCAJETES, 22154
2 Redwood Road, Castro Valley, Ca. 94546.

3 2. PLAINTIFF seeks damages, injunctive and declaratory relief,
4 attorney fees and costs against the DEFENDANTS pursuant to the
5 American with Disabilities Act of 1990, 42 U.S.C §12101 et seq.
6 (hereinafter "ADA") and violations of the California Unruh Civil
7 Rights Act, California Civil Code section 51 et seq., and the
8 California Disabled Person's Act. (California Civil Code section
9 54 et seq.)
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13 **II. JURISDICTION**

14 3. The United States District Court, Northern District of
15 California, has original federal question jurisdiction of the
16 action pursuant to 28 U.S.C. §1331 for violations of the ADA, 42
17 U.S.C. §12101 et seq. The Court also has supplemental jurisdiction
18 over all state law claims pursuant to 28 U.S.C. § 1367, because the
19 state law claims arise out of the same case or controversy.
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22 **III. VENUE**

23 4. All actions complained of herein take place within the
24 jurisdiction of the United States District Court, Northern District
25 of California, and venue is invoked pursuant to 28 U.S.C. §1391(b),
26 (c). Additionally, the real property that is the subject of this
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1 action is located in the United States District Court, Northern
2 District of California.

3 4 **IV. INTRADISTRICT**

5 5. This civil case should be assigned to the Oakland
6 intradistrict because the civil rights violations occurred in, and
7 PLAINTIFF'S rights arose in, the Oakland intradistrict. PLAINTIFF
8 will stipulate to a Voluntary Dispute Resolution Program.
9 PLAINTIFF consents to an early Settlement Conference.
10

11 12 **V. PARTIES**

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14 6. DEFENDANT LOS MOLCAJETES is a business establishment and
15 restaurant open to the public with onsite public parking located at
16 22154 Redwood Road, Castro Valley, California 94546. DEFENDANT LOS
17 MOLCAJETES serves food and beverages during breakfast, lunch and
18 dinner hours. DEFENDANT LOS MOLCJETES also provides catering
19 services from the same location.
20

21 7. DEFENDANT CRESPIN LIESELOTTE (hereinafter "DEFENDANT
22 LIESELOTTE") owns, operates, controls, manages, rents, leases or
23 occupies the real property located at 22154 Redwood Road, Castro
24 Valley, California 94546. PLAINTIFF believes DEFENDANT LIESELOTTE
25 owns the real property and improvements where DEFENDANT LOS
26 MOLCAJETES is located.
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1 8. PLAINTIFF is an American with severe physical impairments and
2 is a "person with a disability" and a "physically handicapped
3 person" pursuant to the rules and regulations of the ADA, 42 U.S.C
4 §12102 (2) (A); 28 C.F.R §36.104, and related California statutes
5 including California Civil Code §51, et seq., and §54, et seq.
6 PLAINTIFF suffers from rhumatoid arthritis and needs the assistance
7 of a wheelchair for assistance in her daily life activities.
8 PLAINTIFF cannot walk without the assistance from her motorized
9 wheelchair. She can, however, drive a motor vehicle and when she
10 does she brings her motorized wheelchair with her to assist with
11 her mobility.
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15 VI. GENERAL ALLIGATIONS

16 9. DEFENDANT LOS MOLCAJETES is a "public accommodation" as
17 defined by 42 U.S.C §12181(7); 28 C.F.R. §36.104 and subject to the
18 requirements of California Civil Code §51 and §52 since it is a
19 business open to the public. DEFENDANT LOS MOLCAJETES is open to
20 the public whose sole purpose is intended for nonresidential
21 commercial use and whose operation affects interstate commerce.
22

23 10. On August 12, 2015, PLAINTIFF patronized DEFENDANT LOS
24 MOLCAJETES restaurant, where she suffered great difficulty,
25 discomfort, and embarrassment in her efforts to both access and use
26 DEFENDANT LOS MOLCAJETES' place of business. Whether through
27 neglect, apathy or otherwise, DEFENDANT LOS MOLCAJETES' facilities
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1 were not compliant with numerous state or federal ADA rules and
2 regulations.

3 11. Although DEFENDANT LOS MOLCAJETES has on-site parking
4 available to patrons, the handicap parking thereon is not compliant
5 with the state and federal rules.

6 12. DEFENDANT LOS MOLCAJETES failed to provide van accessible
7 parking causing PLAINTIFF great difficulty parking and exiting her
8 van. Required handicap parking signage was not properly marked and
9 designated. "No Parking" signage was missing at the loading zone.
10 There was essentially no disability parking at DEFENDANT LOS
11 MOLCAJETES.
12

13 13. PLAINTIFF entered the restaurant despite the condition of the
14 parking lot. PLAINTIFF ordered food and ate lunch. At some point
15 PLAINTIFF sought to use the restrooms. DEFENDANT LOS MOLCAJETES
16 failed to provide wheelchair access to fixtures and accessories in
17 the bathroom as required by law causing humiliation and discomfort
18 to PLAINTIFF in her efforts to use the facility in order to relieve
19 herself. In fact, PLAINTIFF was unable to enter the woman's
20 bathroom because it was totally inaccessible to her while she was
21 in her wheelchair. PLAINTIFF was forced to use the men's restroom.
22

23 14. The bathroom door handle was not compliant which made it
24 difficult to open as PLAINTIFF entered. The bathroom light switch,
25 paper towels, toilet seat covers and soap were improperly placed
26 and inaccessible to PLAINTIFF because she could not reach them.
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1 The toilet was positioned too low for PLAINTIFF to use it as well.
2 However, PLAINTIFF did the best she could do and used the restroom
3 and exited.

4 15. When PLAINTIFF exited DEFENDANT LOS MOLCAJETES she noticed
5 there were no tow away signs as required by law. PLAINTIFF also
6 noticed that there was also no path of travel from the sidewalk to
7 the building.
8

9 16. On every date mentioned in this complaint, PLAINTIFF
10 personally encountered physical barriers that interfered with, if
11 not outright denied, PLAINTIFF'S ability to use and enjoy the
12 goods, services, privileges and accommodations offered by DEFENDANT
13 LOS MOLCAJETES.
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15 17. These physical barriers violate the explicit statutory mandate
16 to remove all barriers that are "readily achievable".
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18 18. PLAINTIFF seeks injunctive relief to require DEFENDANT LOS
19 MOLCAJETES and DEFENDANT LIESELOTTE to remove all architectural
20 barriers related to her disabilities and to comply with the ADA and
21 Americans with Disabilities Act Accessibility Guidelines
22 (hereinafter "ADAAG") contained in 28 CFR Part 36.
23

24 19. PLAINTIFF is deterred and forgoes visits to DEFENDANT LOS
25 MOLCAJETES based upon personal knowledge of existing barriers.
26 PLAINTIFF understands she is not required to engage in the "futile
27 gesture" of actually returning to the inaccessible place of public
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1 accommodation, however, PLAINTIFF wishes to return to DEFENDANT LOS
2 MOLCAJETES once the physical barriers are eliminated.

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4 **VII. FIRST CLAIM**

5 **VIOLATION OF TITLE III OF THE ADA**

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7 20. PLAINTIFF hereby incorporates and re-alleges, as if fully set
8 forth herein, each and every allegation contained in paragraphs 1
9 through 19.

10 21. Title III of the ADA, and the regulations promulgated
11 thereunder, require that after January 26, 1992, all new
12 construction and alterations of facilities for the use of the
13 public be designed and constructed in such a manner that the public
14 accommodation is readily accessible to, and usable by, individuals
15 with disabilities.
16

17 22. DEFENDANT LOS MOLCAJETES discriminated, and each of them,
18 against PLAINTIFF on the basis of PLAINTIFF'S disabilities and
19 denied PLAINTIFF the opportunity to participate in, or benefit
20 from, the goods, services, facilities, privileges, advantages or
21 accommodations, in violation of 42 U.S.C. §12182(a), 42 U.S.C.
22 §12182(b) (1) (A) (I) .
23

24 23. Moreover, DEFENDANT LOS MOLCAJETES' conduct denied PLAINTIFF,
25 on the sole basis of PLAINTIFF'S disabilities, the opportunity to
26 participate in, or benefit from, a good, service, privilege,
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1 advantage or accommodation that was equal to that afforded to other
2 individuals in violation of 42 U.S.C. §12181(b)(1)(A)(ii).

3 24. Furthermore, DEFENDANT LOS MOLCAJETES failed to provide
4 PLAINTIFF with it's goods, services, facilities, privileges,
5 advantages and accommodations in the most integrated setting
6 appropriate to a disabled person's, including PLAINTIFF'S,
7 individual needs in violation of 42 U.S.C. §12182(b)(1)(B).

9 25. **INJUNCTIVE RELIEF:** PLAINTIFF seeks injunctive relief to
10 prohibit the acts and omissions of DEFENDANT LOS MOLCAJETES as
11 complained of herein which have the effect of wrongfully
12 discriminating against PLAINTIFF and other members of the public
13 who are physically disabled from full and equal access to these
14 public facilities. Such acts and omissions were the cause of
15 humiliation and physical, mental, and emotional suffering of the
16 PLAINTIFF in that these actions treated PLAINTIFF as an inferior
17 and second-class citizen and served to discriminate against her on
18 the sole basis that PLAINTIFF is, and at all times mentioned in
19 this complaint was, a person with disabilities. PLAINTIFF is
20 currently deterred from patronizing DEFENDANT LOS MOLCAJETES and
21 will be unable to achieve equal access to services and facilities
22 at the public accommodation so long as such acts and omissions of
23 DEFENDANTS continue. The acts of DEFENDANTS proximately caused
24 irreparable injury to PLAINTIFF and will continue to cause
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1 irreparable injury to PLAINTIFF and to other disabled persons if
2 not enjoined by this District Court.

3 26. As of the date of the filing of this complaint, DEFENDANT LOS
4 MOLCAJETES continues to be in violation of state and federal ADA
5 law in that the complained of property and business are, and
6 continue to be, generally inaccessible for use by physically
7 disabled persons such as PLAINTIFF. PLAINTIFF requests that an
8 injunction be ordered requiring that the DEFENDANT LOS MOLCAJETES
9 take prompt action to modify the aforementioned policies and public
10 facilities to render them accessible to and usable by PLAINTIFF,
11 and thereby make DEFENDANT LOS MOLCAJETES' services available to
12 and usable by physically disabled persons, including PLAINTIFF.
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15 27. Wherefore, PLAINTIFF prays the District Court grant relief as
16 requested below.
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18 **VIII. SECOND CLAIM**

19 **VIOLATIONS OF CALIFORNIA CIVIL CODE §§ 51, et seq.**

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21 28. PLAINTIFF hereby incorporates and re-alleges, as if fully set
22 forth herein, each and every allegation contained in paragraphs 1
23 through 27.
24

25 29. California's Civil Code §51(b) requires that individuals with
26 disabilities have "full and equal accommodations, advantages,
27 facilities, privileges or services in all establishments of every
28 kind whatsoever." DEFENDANT LOS MOLCAJETES is, and at all times

1 mentioned in this complaint was, violating California Civil Code
2 §51 through DEFENDANT LOS MOLCAJETES' failure to remove
3 architectural and accessibility barriers to the public
4 accommodations and also through the disparate treatment of
5 PLAINTIFF.

6
7 30. DEFENDANT LOS MOLCAJETES, complained of herein, located at
8 22154 Redwood Road, Castro Valley, Ca. 94546 is, and at all time
9 mentioned in this complaint was, a "public accommodations" pursuant
10 to the ADA and the California Civil Code.

11 31. PLAINTIFF encountered accessibility barriers and was also
12 subjected to disparate treatment while she patronized DEFENDANT LOS
13 MOLCAJETES' public accommodations.

14
15 32. DEFENDANT LOS MOLCAJETES has, and at all times mentioned in
16 this complaint had, architectural and accessibility barriers that
17 limited access for disabled individuals, including PLAINTIFF. The
18 accessibility denied PLAINTIFF, and other disabled persons to the
19 equal access at DEFENDANT LOS MOLCAJETES and its' accommodations,
20 advantages, facilities, privileges, and services resulted in
21 discrimination against PLAINTIFF on the sole basis of PLAINTIFF'S
22 disabilities. DEFENDANT LOS MOLCAJETES' violations are ongoing.

23
24 33. DEFENDANT LOS MOLCAJETES' actions constitute intentional
25 discrimination on the basis of PLAINTIFF'S disabilities in
26 violation of the California Civil Code §51 in that: 1.) DEFENDANT
27 LOS MOLCAJETES and DEFENDANT LIESELOTTE owned, operated and
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1 maintained public accommodations; 2.) DEFENDANT LOS MOLCAJETES and
2 DEFENDANT LIESELOTTE knowingly failed to remove architectural and
3 access barriers; 3.) DEFENDANT LOS MOLCAJETES and DEFENDANT
4 LIESELOTTE subjected PLAINTIFF to disparate treatment when PLAINTIFF
5 was treated differently from other members of the public due to
6 PLAINTIFF'S disabilities.
7

8 34. California Civil Code §52 provides that the discrimination by
9 DEFENDANT LOS MOLCAJETES and DEFENDANT LIESELOTTE against PLAINTIFF
10 on the basis of PLAINTIFF'S disability constitutes a violation of
11 the general anti-discrimination provisions of California Civil Code
12 §51 and §52.
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14 35. DEFENDANT LOS MOLCAJETES and DEFENDANT LIESELOTTE
15 discrimination constitutes a separate and distinct violation of
16 California Civil Code §52, which provides that:

17 "Whoever denies, aids or incites a denial, or makes any
18 discrimination or distinction contrary to California Civil Code
19 §51, §51.5, or §51.6 is liable for each and every offense for the
20 actual damages, and any amount that may be determined by a jury, or
21 a court sitting without a jury, up to a maximum of three times the
22 amount of actual damage but in no case less than four thousand
23 dollars (\$4,000), and any attorney's fees that may be determined by
24 the court in addition thereto, suffered by any person denied the
25 rights provided in §51, §51.5, or §51.6."
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1 36. DEFENDANT LOS MOLCAJETES and DEFENDANT LIESELOTTE knowingly
2 violated California Civil Code §51 intentionally and/or with
3 deliberate indifference to the likelihood that they were violating
4 the rights of disabled people. In addition, DEFENDANTS' violations
5 were so intuitive or obvious that noncompliance could not be other
6 than intentional.
7

8 37. The acts and omissions of DEFENDANTS, as herein alleged,
9 constitute a denial of access to, and use of, the described public
10 facilities by physically disabled persons within the meaning of
11 California Civil Code §51 and §52. As a proximate result of
12 DEFENDANTS' acts and omissions, DEFENDANTS discriminated against
13 PLAINTIFF in violation of California Civil Code §51 and §52.
14

15 38. Any violation of the ADA also constitutes a violation of
16 California Civil Code §51(f), thus independently justifying an
17 award of damages and injunctive relief pursuant to California law.
18 Per California Civil Code §51(f), "(A) violation of the right of
19 any individual under the ADA (Public Law 101-336) shall also
20 constitute a violation of this section."
21

22 39. Wherefore, PLAINTIFF prays the District Court grant relief as
23 requested below.
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25 **IX. THIRD CLAIM**

26 **VIOLATIONS OF CALIFORNIA CIVIL CODE § 54, et seq. - THE CALIFORNIA**
27 **DISABLED PERSONS ACT**
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1 40. PLAINTIFF hereby incorporates and re-alleges, as if fully set
2 forth herein, each and every allegation contained in paragraphs 1
3 through 39.

4 41. The California Disabled Persons Act, California Civil Code
5 §§54 and 54.1, (hereinafter "CDPA"), guarantees people with
6 disabilities full and free use of all public places and full and
7 equal access to all places to which the public is invited.
8

9 42. DEFENDANT LOS MOLCAJETES and DEFENDANT LIESELOTTE are, and at
10 all times mentioned in this complaint were, violating the rights of
11 disabled persons, and violated the rights of PLAINTIFF, by denying
12 her equal access to a public place through architectural barriers
13 and disparate treatment.
14

15 43. DEFENDANT LOS MOLCAJETES and DEFENDANT LIESELOTTE own,
16 operate, control and/or lease a "public place" within the meaning
17 of the CDPA. By failing to remove architectural barriers or to
18 provide reasonable accommodations to the PLAINTIFF, DEFENDANTS
19 violated PLAINTIFF'S rights under the CDPA.
20

21 44. The actions of the DEFENDANTS are, and at all times mentioned
22 in this complaint were, in violation of the CDPA.

23 45. PLAINTIFF is entitled to damages for each offense, and to
24 declaratory relief under California Civil Code §54.3.
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26 46. PLAINTIFF is also entitled to reasonable attorneys' fees and
27 costs under the CDPA.
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1 47. Wherefore, PLAINTIFF prays the District Court grant relief as
2 requested below.

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4 **X. PRAYER**

5 WHEREFORE, PLAINTIFF prays the following:

6 1. Issue a preliminary and permanent injunction directing the
7 DEFENDANT LOS MOLCAJETES and DEFENDANT LIESELOTTE to modify the
8 facilities and policies as required by law to comply with the ADA
9 and ADA regulations, including the ADAAG where required; institute
10 policy to enable PLAINTIFF to use goods and services offered to the
11 non-disabled public so that DEFENDANTS provide adequate access to
12 all citizens, including persons with disabilities; issue a
13 preliminary and permanent injunction directing DEFENDANTS to
14 maintain it's facilities usable by PLAINTIFF and similarly situated
15 person with disabilities in compliance with federal regulations,
16 and which provide full and equal access, as required by law;
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18 2. Retain jurisdiction over the DEFENDANTS until such time as the
19 District Court is satisfied that DEFENDANTS' unlawful policies,
20 practices, acts and omissions, and maintenance of inaccessible
21 public facilities as complained of herein no longer occur, and will
22 not recur;
23

24 3. Award to PLAINTIFF all appropriate damages, including, but not
25 limited to, statutory damages and general damages in an amount
26 within the jurisdiction of the District Court, according to proof;
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1 4. Award PLAINTIFF all litigation expenses and costs of this
2 proceeding, including all reasonable attorney fees as provided by
3 law; and

4 5. Grant such other and further relief as this District Court may
5 deem just and proper.
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8 Date: SEPTEMBER 24, 2015.
9

10 /s/ Russell S. Humphrey
11 By: Russell S. Humphrey
12 Attorney for PLAINTIFF
13 FRANCISCA MORALES
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DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury pursuant to FRCP 38(b) on all issues of law raised in the complaint.

Date: SEPTEMBER 24, 2015.

/s/ Russell S. Humphrey
By: Russell S. Humphrey
Attorney for PLAINTIFF
FRANCISCA MORALEZ